IN THE HIGH COURT OF UTTARAKHAND ATNAINITAL

Writ Petition No. 439 of 2007 (M/S)

Mohan Lal Son of Sri Gopal Lal, Resident of Village Pagno, Block Joshimath, Tehsil Joshimath, District Chamoli.

....Petitioner.

Versus

1. State of Uttarakhand through Collector, Chamoli.
2. District Judge, Chamoli,
3. Deputy Collector Joshimath, District Chamoli.
4. Returning Officer Block Joshimath, District Chamoli.
5. Pooran Das S/O Metu, Resident of Village Pagno Blcok Joshimath, Tehsil Joshimath, District Chamoli.
6. Shisupal La son of Malku Lal, Resident of village Pagno, Block-Joshimath, District Chamoli.

…..Respondents.

Sri Narayan Singh, learned counsel for the petitioner.
Sri Gopal Narain Srivastava, Brief Holder for the State-respondent 1-3.

Dated May 16, 2007.

Hon'ble B.S.Verma, J.

This writ petition has been filed by the petitioner for setting aside the judgment and order dated 21-11-2006 passed by the respondent no.3 Sub Divisional Officer Joshimath ***(for short the S.D.O.)*** (Annexure No.2) thereby the election petition of the respondent no. 5 was allowed, and the order dated 9-5-2007 (Annexure No.4) passed by the District Judge Chamoli in Civil Revision No. 5 of 2006, Mohan Lal Vs. Pooran Das, whereby the revision of the petitioner was dismissed and the judgment and order dated 22-11-2006 passed in Election Petition No. 02 of 2003 by the Sub Divisional Officer Joshimath was confirmed.

Relevant facts giving rise to the present writ petition are that the respondent no. 5 Pooran Das filed an election petition before the respondent no.3 challenging the election of petitioner Mohan Lal to the office of Gram Pradhan of the village Pagno. The petitioner Mohan Lal, respondent no. 5 Pooran Dass and respondent

no. 6 Shishupal Lal were the contestants in the election held on 27-3-2007. 230 voters exercised their franchise. In the counting it was found that 101 votes were cast in favour of respondent no. 5, 98 votes in favour of the petitioner and 28 votes were cast in favour of the respondent no.6. Out of the votes cast, 19 ballot papers relating to Pooran Dass and 15 ballots out of 98 votes cast in favour of the petitioner were not taking into consideration as they did not contain the signatures of the polling officer. The petitioner was declared elected to the officer of Gram Pradhan Pagno.

The said election was challenged before the Sub Divisional Officer Joshimath by the respondent Pooran Dass. The petitioner and the respondent no. 6 filed their separate written statements and denied the allegations made by the election petitioner Pooran Dass. The S.D.O. framed necessary issues in the case. Before the trial court, election petitioner examined himself as P.W.1 and Ramesh Lal as P.W.2, while the defendants did not lead any evidence despite sufficient opportunity. The S.D.O. after recounting of votes found that out of 231 total votes, petitioner Pooran Dass got 101 votes, while returned candidate Mohan Lal had obtained 98 votes and Shishupal Lal got 26 votes and 6 votes were found invalid. The learned S.D.O. allowed the election petition and declared election petition Pooran Dass as elected vide his order dated 21-11-2006. Aggrieved the petitioner preferred revision before the District Judge Chamoli, who did not find favour with the revisionist and dismissed the revision vide order 9-5-2007 and confirmed the order of the S.D.O. Joshimath.

Aggrieved by the impugned orders, the petitioner has come up before this Court in writ petition.

The Apex Court in the case of ***Jibontara Ghatowar Vs. Sarbananda Sonowal and others [JT 2003 (5) Supreme Court, 353]*** has observed inter alia in paragraph no. 15 that “a bare reading of the rules shows that the obligation is cast on the polling officer to

stamp with such distinguishing mark as the Election Commission may direct and to sign in full on the back of the ballot papers. The candidate has no role to play in the performance of such duty by the polling officer. Absence of mark and the signature renders the ballot paper liable to be rejected. However, still, where the returning officer feels satisfied that such defect has been caused by any mistake or failure on the part of the presiding officer or polling officer, the ballot paper shall not be rejected merely on the ground of such defect."

In the instant case, it is not disputed that in all 230 votes were cast in the election and out of them total 98 votes were cast in favour of petitioner out of which 15 ballot papers did not contain the signatures of the Presiding Officer. It is also not disputed that total 101 votes were cast in favour of the respondent no.5/election petitioner out of them 21 ballot papers did not contain signatures of the Presiding Officer. Before the trial court after filing their written statement, the petitioner has not led any evidence to controvert the claim of the respondent Pooran Dass. In view of the law laid down by the Apex Court in the case of *Jibontara Ghatowar (supra)*, the rejection of votes only for the reason that they did not bear signatures of the Presiding Officer was not proper. Accordingly, the S.D.O. concerned did not commit any manifest error of law in allowing the election petition of respondent no. 5-Pooran Dass. The trial court as well as revisional court have dealt with the matter in detail and there is no perversity or illegality in the orders passed by them.

The writ petition is devoid of merit and is liable to be dismissed outright at the threshold.

The writ petition is dismissed in limine.

(B.S. Verma, J.)

RCP